

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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| In the matter of |) | |
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| Facilitating the Deployment of |) | |
| Text-to-911 and Other 911 Applications |) | PS Docket No. 11-153 |
| |) | |
| |) | |
| Framework for Next Generation 911 |) | |
| Deployment |) | PS Docket No. 10-255 |
| |) | |
| |) | |

**REPLY COMMENTS OF THE INFORMATION TECHNOLOGY INDUSTRY
COUNCIL**

APRIL 9, 2013

The Information Technology Industry Council (ITI) hereby submits these reply comments in response to the Federal Communications Commission's (Commission) Further Notice of Proposed Rulemaking (FNPRM) for text-to-911 requirements in the above referenced proceeding.¹

ITI is the voice of the technology sector, representing the world's leading innovation companies.² ITI advocates for policies that advance U.S. leadership in technology and innovation, open access to new and emerging markets, support expansion of e-commerce, protect and enhance consumer choice, and promote increased global competition. ITI's membership is comprised of Internet services and e-commerce

¹ See *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment*, Further Notice of Proposed Rulemaking, FCC 12-149, PS Docket No. 11-153, PS Docket No. 10-255 (rel Dec. 13, 2012).

² For more information about ITI, including a list of its members, please visit: <http://www.itic.org/about/member-companies.dot>.

companies, wireless and wireline network equipment manufacturers and suppliers, computer hardware and software companies, and consumer technology and electronics companies.

I. INTRODUCTION

ITI welcomes the opportunity to provide comments in this important proceeding. ITI's member companies are committed to public safety and facilitating the next generation 911 network. Text-to-911 will be an important component of next generation 911 deployment, but in developing any such system, the Commission should take a sensible approach that minimizes confusion for consumers, recognizes the technological limitations of various messaging services, and is confined to areas where it has clear jurisdictional authority.

II. THE COMMISSION SHOULD MAKE CLEAR OVER-THE-TOP SERVICES FALL OUTSIDE THIS PROCEEDING

The Commission seeks comment on whether texting applications can be divided into to categories, namely 1) interconnected IP-based text applications that ultimately use IP-based or SMS based protocols to deliver a text message to and receive a text message from a point identified by a telephone number, and 2) non-interconnected applications that generally do not support communication with text-capable telephone numbers.³ The latter category, non-interconnected applications, clearly should not be considered in this proceeding as it is technically infeasible that these services could communicate with a public safety answering point (PSAP). However, the starting point and the end-point of

³ FNPRM, ¶ 91.

a text message should not be the determining factor of whether an over-the-top (OTT) service is subject to the proposed regulations.

OTT, internet protocol (IP) -based messaging applications are fast evolving, and often not limited to a single platform (i.e. a mobile phone). Many OTT services are accessible on multiple platforms (e.g. mobile phone, tablet, laptop, and/or desktop computer), some of which may or may not have access to location-based information; an OTT application's ability to access and provide accurate location information may also be limited by whether it is connected to a cellular data or Wi-Fi network, and by the user's preferences to restrict an application's access to location information. Unlike native SMS, which is able to obtain reliable wireless network location information from the provider offering the service, OTT applications are offered by entities that are not affiliated with the relevant network operator.

The Commission proposes several options for OTT services to communicate with PSAPs.⁴ Mandating any technology requirements in application design would be difficult and costly for companies that design one application to run across multiple devices and platforms. ITI has previously commented on the technological and cost considerations for both companies and PSAPs if a multitude of OTT services are required to be configured for emergency communications.⁵ Many OTT applications are not designed to access or provide location information, further complicating the ability to provide accurate information to PSAPs. Those applications that do access or provide that information, given user consent, rely on location data obtained by means other than from

⁴ FNPRM, ¶ 95-99.

⁵ See ITI comments in GN Docket No. 11-117, PS Docket No. 07-114, WC Docket No. 05-196 at 10-11 (filed October 3, 2011).

the network operator.⁶ Obtaining and delivering the additional relevant information for the text message to be useful to the PSAP and first responders relies on far too many variables beyond the control of the OTT application provider.

Should the Commission move injudiciously down this path, it should, narrowly define the class of services that will need to comply with its rules. Given the inability of OTT text services to generate or leverage accurate location information, the Commission should resolve these issues in the context of next generation 911 and should not require OTT text services to comply with circuit switched based 911 solutions. At a minimum, the Commission should make clear that OTT services that do not leverage a telephone number are not subject to any 911 requirements; OTT texting services, or other applications that provide strictly IP-to-IP communication should not be touched by this proceeding. In addition, the Commission should exclude group text messaging services regardless of whether they are able to connect to telephone number. These are services that allow a user to send and/or receive text messages to and/or from a defined group of users. In this scenario, consumers are unlikely to have any interest in adding 911 to a group text conversation.

Lastly, the Commission, should make clear that non-phone products are completely exempt. Various forms of OTT messaging applications may be found on devices ranging from tablets, laptops, and computers, to televisions, gaming machines, media players, and even appliances. There should be no expectation that these devices are able to communicate with a PSAP, let alone have location awareness. Beyond the technical infeasibility, any regulation of these products in this area would be prohibitively expensive, and crippling for innovation.

⁶ See initial comments of Voice on the Net Coalition at 10 (filed March 11, 2013).

III. TEXT-TO-911 REGULATION OF OVER-THE-TOP SERVICES DEPARTS FROM LAWFUL PRECEDENT AND FALLS OUTSIDE THE COMMISSION'S JURISDICTION

The Commission seeks comment on the extent of its jurisdiction to regulate OTT applications requiring text-to-911 communication under various provisions of the Communications Act and the Twenty-First Century Communications and Video Accessibility Act of 2010⁷ (CVAA).⁸ This is a departure from the Commission's long-standing position that there are significant operational distinctions between facilities-based network providers and services and applications that are dependent on those networks to reach end-users.

a. The Communications Act does not provide the Commission authority to regulate over-the-top services

The Communications Act does not provide any direct authority, nor ancillary authority, through which its jurisdiction would encompass regulation of OTT services and applications. OTT applications and services do not require a radio license nor any other authorization from the Commission. OTT services operate, and are dependent upon a broadband internet connection provided by either a licensed service provider, or an unlicensed broadband internet connection (e.g. 802.11). As such, OTT applications and services are not subject to provisions in Section 3 of the Communications Act referenced in the FNPRM.⁹ Additional filings in the initial comment period have further discussed and reinforced this point.¹⁰

⁷ Pub. L. No. 111-260, 124 Stat. 2751 (2010).

⁸ FNPRM, ¶ 168-172

⁹ FNPRM, ¶ 170.

¹⁰ See comments of Voice on the Net Coalition at 6 (filed March 11, 2013); TechAmerica comments at 6 (filed March 11, 2013); and, Telecommunications Industry Association comments at 5 (filed March 11, 2013).

- b. The CVAA does not provide direct authority to require text-to-911 for OTT applications, nor would such a requirement meet the achievability standard*

Congress drew a fine line with regard to the scope of the Commission's authority to impose new 911 regulations on OTT services. It limits the Commission's 911 solutions to those related to an Internet protocol-enabled emergency network, where achievable and technically feasible.¹¹ It does not confer authority on the Commission to establish rules related to OTT services in the context of a circuit switched network.

The CVAA also sets forth four factors that the Commission must consider equally in determining whether accessibility in a particular case is "achievable": (a) the nature and cost of steps needed with respect to specific equipment or service; (b) the technical and economic impact on the operation; (c) the type of operation at issue; and (d) the extent to which the service provider or equipment manufacturer has accessible offerings with varying degrees of features and functionality at various price points.¹² For reasons mentioned above, it is unlikely text-to-911 requirements on OTT applications would meet the first standard. It would be technically infeasible to communicate and provide necessary information to a PSAP without significantly altering current applications. The "technical and economic impact" of small application developers, as well as the "development and deployment of new communications technologies" by that group, would be seriously brought into question should the Commission move ahead in this area.

¹¹ 47 U.S.C. § 615g.

¹² 47 U.S.C. § 617(g).

IV. CONCLUSION

ITI supports the Commission's goal of expanding the capabilities for consumers to communicate with 911. In doing so, however, the Commission should consider the extent to which such communications would be technically feasible, be clear to the consumer, reliably provide accurate and useful information to the PSAP, and fall within the Commission's jurisdiction. For the reasons noted above, the Commission should refrain from requiring OTT applications to meet text-to-911 regulations because doing so would not meet any of these criteria.

Respectfully Submitted,

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